IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CLINT RICHARDSON
Plaintiff

V. NO. 4:96CV166-B-B

GREENVILLE CASINO PARTNERS, LP,
A MISSISSIPPI LIMITED PARTNERSHIP
d/b/a LAS VEGAS CASINO, CITY OF
GREENVILLE, MISSISSIPPI, and
JOHN DOES 1-4

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant, City of Greenville, for summary judgment.[1] The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

The plaintiff, a resident of Texas, was visiting Greenville, Mississippi, in February of 1995 when he was injured in a trip and fall just outside of the Las Vegas Casino. The plaintiff had been gambling in the Cotton Club Casino, but left at approximately midnight of February 19, 1995, to walk to the Las Vegas Casino, located adjacent thereto. Both casinos share a paved parking lot on the shore of Lake Ferguson, which parking lot also serves as a public boat ramp. The parking lot is apparently owned by the City of Greenville. The Las Vegas Casino is moored

[1] Although the defendant's motion is entitled "Motion to Dismiss, or, in the Alternative, for Summary Judgment," the body of the motion and brief refer only to summary judgment relief pursuant to Rule 56 of the Federal Rules of Civil Procedure. No mention is made of a motion to dismiss other than in the title.

to the parking area by way of two or more cables that are tied to large metal rings which are permanently affixed to the parking lot. The plaintiff tripped and fell over one of these mooring lines, and subsequently filed suit for the injuries he received as a result of his fall. The plaintiff alleges that the defendant city, as owner of the premises, was negligent in failing to warn of the dangerous condition of the premises, in failing to keep the premises in a reasonably safe condition, and in failing to provide adequate lighting.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

The city moves for summary judgment on the grounds of sovereign immunity. Alternatively, the city maintains that the plaintiff has failed to produce any evidence to support the notion that the city breached the duty owed to the plaintiff, whom the city contends was a licensee. While the city may have a valid argument as to sovereign immunity, the law is very clear as to the status of the plaintiff and the duty owed as a result thereof, and therefore the court need not address the issue of sovereign immunity.

Mississippi rigidly adheres to the common-law distinctions between trespassers, licensees, and invitees in determining the duties of landowners toward persons entering on their property. Davis v. Illinois Cent. R.R. Co., 921 F.2d 616, 618 (5th Cir. 1991). Under Mississippi law, an invitee is one who enters the premises of another at the express or implied invitation of the owner or occupant for their mutual benefit. Hoffman v. Planters Gin Co., 358 So. 2d 1008, 1011 (Miss. 1978). A licensee is one who enters the property of another for his own convenience, pleasure, or benefit pursuant to the license or implied permission of the owner. Id. Finally, a trespasser is one who enters upon the property of another without license, permission, or other right. Id. The determination of which status a party holds can be a question of fact for the jury, but when the facts are undisputed, status becomes a question of law for the court to decide. Adams v. Fred's Dollar Store, 497 So. 2d 1097, 1100 (Miss. 1986).

A landowner owes an invitee the duty to exercise reasonable care for the invitee's safety. Lumbley v. Ten Point Co., 556 So. 2d 1026, 1030 (Miss. 1989); Lucas v. Buddy Jones Ford Lincoln Mercury, Inc., 518 So. 2d 646, 648 (Miss. 1988). However, a landowner merely owes a licensee the duty to refrain from willfully or wantonly injuring him. Lumbley, 556 So. 2d at 1029; Lucas, 518 So. 2d at 648. Although the plaintiff maintains that he is an invitee of the city, and therefore is owed the higher standard of care, the court finds otherwise. In regards to the

city, the plaintiff is simply a licensee, as the plaintiff has presented no evidence of the existence of a mutual benefit. The plaintiff was using the city's parking lot for his own pleasure and convenience in walking from one casino to another. Therefore, the court finds that the plaintiff is a licensee of the city, and as such, the city's duty was to refrain from willfully or wantonly injuring the plaintiff.

The Misseption to the duty owed a licensee by a landowner. Where the landowner engages in active negligence which subjects the licensee to unusual danger, and the licensee's presence is known to the landowner, the landowner owes the licensee the duty of reasonable care. Brown v. Scott Paper Co., 684 F. Supp. 1392, 1395 (S.D. Miss. 1987); Hoffman, 358 So. 2d at 1013. However, the exception does not apply where the injury is caused by a condition of the premises or passive negligence. Lucas, 518 So. 2d at 648; Brown, 684 F. Supp. at 1396; Hughes v. Star Homes, Inc., 379 So. 2d 301, 304 (Miss. 1980). This case is clearly one in which the injury was caused by the condition of the premises, and therefore the "simple negligence" exception does not apply.

Upon careful consideration of the record, the court finds that the plaintiff has neither stated a claim for willful and wanton injury, nor presented any proof thereof. Therefore, the court finds that the defendant's motion for summary judgment should be granted.

CONCLUSION

For the foregoing reasons, the court finds that the motion of the defendant, City of Greenville, for summary judgment, should be granted. An order will issue accordingly.

THIS, the ___ day of May, 1997.

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NEAL B. BIGGERS, JR.

UNITED STATES DISTRICT JUDGE